

# MEETING AGENDA

City of Huntington Beach  
PERSONNEL COMMISSION  
Wednesday, April 18, 2007  
Civic Center, Room B-8  
5:30 P.M.

## 1. CALL TO ORDER

Commissioners: Gooch, Deight, Hunt, Barton, Garner, Bush, Clemens  
Legal Counsel to the Personnel Commission: Jim Murphy, Esq.  
Staff Liaison: Bob Hall, Deputy City Administrator/City Services  
Also present: Brigitte Charles, Secretary to the Personnel Commission/Principal Human Resources Analyst

## 2. PLEDGE OF ALLEGIANCE

## 3. PUBLIC COMMENTS

The Personnel Commission welcomes public comments on all items on this agenda or of community interest. We respectfully request that this public forum be utilized in a positive and/or constructive manner. Please focus your comments on the issue or problem that you would like to bring to the attention of the Personnel Commission. Negative comments directed at individuals are not acceptable.

Three (3) minutes per person. Time may not be donated to others. No action can be taken by the Personnel Commission on this date unless agendaized. This is the time to address the Personnel Commission regarding items of interest or on agenda items other than public hearings.

## 4. APPROVAL OF MINUTES

Meeting of March 21, 2007

## 5. CONSIDERATION FOR SCHEDULING A HEARING DATE FOR NON-DISCIPLINARY HEARING PURSUANT TO PERSONNEL RULE 19

**Recommended Action:** Establish the date for the June meeting of the Personnel Commission.

## 6. PERSONNEL – SUPPLEMENTAL DISCIPLINARY HEARING IN ACCORDANCE WITH PERSONNEL RULE 20 – FINDINGS OF FACT AND CONCLUSIONS OF LAW - CLOSED SESSION OPTION PER GOVERNMENT CODE SECTION 54957

Recommendations of Hearing Officer Joseph F. Gentile regarding Propriety of Adverse Action  
Deliberation in Closed Session

Please contact Sandy Henderson at (714) 960-8828 if you have questions or if the Human Resources Division can be of any assistance.

**Recommended Action:** Sustain, reject or modify the Hearing Officer's recommendation. If the Commission rejects or modifies the recommendation, direct the legal advisor to prepare findings of fact and conclusions of law in support of the Commission's decision.

This item will begin at approximately 6:00 p.m.

## **7. COMMISSION GOALS FOR THE COMING YEAR**

City staff to provide update of progress. (Attachment)

## **8. LABOR RELATIONS UPDATE**

As offered

## **9. COMMENTS FROM COMMISSIONERS**

Announcements, brief report regarding Commissioner activities, ask questions for clarification, request information from Staff, direction to Staff regarding a future agenda item or for the provision of information for a future meeting.

## **10. INFORMATION ITEMS**

Grievance Report – March 2007

## **11. ADJOURNMENT**

Meeting adjourned to the next regularly scheduled meeting of May 16, 2007.

**ITEM # 4**

MINUTES  
City of Huntington Beach  
**PERSONNEL COMMISSION**  
**3/21/07**

Pending approval by Personnel Commission at the meeting on 4/18/07  
(These minutes are not verbatim. A taped recording of the meeting is available in the Human Resources Division, first floor of City Hall, for one year following meeting date.)

**CALL TO ORDER**

Chairperson Gooch called the Commission meeting to order at 5:31 PM.

**ROLL CALL**

Commissioners present: Bush, Deight, Garner, Gooch, Hunt, and Clemens

Commissioners absent: Barton

Others Present: James Murphy, Esq., Legal Counsel to the Personnel Commission  
Brigitte Charles, Acting Secretary to the Personnel Commission/  
Principal Human Resources Analyst  
Bob Hall, Deputy City Administrator  
Vicky Berg, Principal Human Resources Analyst  
Patti Ahumada, Senior Human Resources Analyst  
Sandy Henderson, Personnel Assistant

**PUBLIC COMMENTS**

None

**APPROVAL OF MINUTES**

Commissioner Gooch requested minor changes to page 3 of the minutes as follows;

The Commissioners did not come to a conclusion in this matter and asked for the procedures involved in Rule 20-6 be imposed. They ~~wished~~ **Commission directed staff** to schedule oral arguments by representatives specifically on items of progressive discipline and the matter of truthfulness at the next regularly scheduled meeting. They ~~are~~ **Commission** request~~ing~~**ed** that the exhibits be made available to them prior to the meeting, specifically on joint Exhibit #5 from the staff report, the charge letter and the determination letter.

A motion was made by Commissioner Gooch and seconded by Commissioner Bush to approve the minutes as amended for the February 21, 2007 meeting (passed 4:0:1 - Commissioners Clemens and Garner abstained).

**PUBLIC HEARING**

5.a. Approve the revised job specification for the position of Volunteer Services Coordinator, amending the City's classification plan.

A motion was made by Commissioner Hunt and seconded by Commissioner Bush to approve the revised job specification (passed 5:0:1 – Commissioner Clemens abstained).

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- 5.b. Approve the revised job specification for the position of Fire Recruit, amending the City's Classification Plan.

A motion was made by Commissioner Hunt and seconded by Commissioner Deight to approve the revised job specification (passed 6:0)

**CONSIDERATION FOR SCHEDULING A HEARING DATE FOR NON-DISCIPLINARY HEARING PURSUANT TO PERSONNEL RULE 19**

Establish the date of the next regularly scheduled meeting of the Personnel Commission.

The motion was made by Commissioner Deight and seconded by Commissioner Bush to request Special Council to the Commission to render a legal opinion of whether or not the Personnel Commission could remand this matter to a hearing officer (passed 6:0).

**PERSONNEL – SUPPLEMENTAL DISCIPLINARY HEARING IN ACCORDANCE WITH PERSONNEL RULE 2- - FINDINGS OF FACT AND CONCLUSIONS OF LAW – CLOSED SESSION OPTION PER GOVERNMENT CODE SECTION 54957**

Request postponement of this hearing to the next regularly scheduled meeting in April to allow the Police Chief to be present. Both parties agreed to this schedule change.

The motion was made by Commissioner Hunt and seconded by Commissioner Bush to postpone the hearing following appropriate agendizing and notification of both parties, that regardless of who is present, the Commission will review this matter and make a determination at the next regularly scheduled meeting (passed: 5:1 – Commissioner Deight voted yes to postpone the hearing and no to the admonition that the parties be present).

**COMMISSION GOALS FOR THE COMING YEAR**

Commissioner Deight requested an amendment to the goal:

***Continue to r***~~Recruit qualified applicants and provide timely eligibility lists to the hiring authority.~~

Commissioner Hunt requested an amendment to the goal;

~~Design and conduct a Personnel Commission Orientation for June 2007~~**during the calendar year of 2007.**

The motion was made by Commissioner Bush and seconded by Commissioner Hunt to approve the goals as amended (passed: 6:0).

**LABOR RELATIONS UPDATE**

Senior Human Resources Analyst, Patti Ahumada reported that the City had reached a tentative agreement with the Fire Management Association (FMA) and planned to go the City Council on April 16, 2007. Negotiations continue with the Management Employees' Organization (MEO), Municipal Employees' Association (MEA), and Surf City Lifeguard Employees' Association (SCLEA).

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**SECRETARY'S REPORT**

Principal Human Resources Analyst, Brigitte Charles announced that the Human Resources Department is moving from the first floor to the lower lobby which will provide a higher degree of confidentiality and will minimize distractions.

Also, one of the new positions for Human Resources Analyst has been filled with the promotion of Patricia Albers, currently a Senior Deputy City Clerk with the City of Huntington Beach.

Additionally, Ms. Charles distributed the third quarter schedule of Surf City "U" employee development workshops and explained registration for the workshops would be now automated through the City's Intranet (Surfnet) with follow-up email notification and reminders.

**COMMENTS FROM COMMISSIONERS**

Commissioner Bush stated he would have preferred to be informed up front, that by receiving a parking permit or stipend, he would be required to attend ethics training as a designated appointee. The ethics training class that he took on-line involved case studies and a test at the end of several segments. The class that he attended in person did not require any reiteration of information, and each person received a certificate--whether or not they paid any attention. Commissioner Bush expressed concern about the treatment of volunteers. He felt very discouraged that he had to go through this and the sexual harassment class. Never was this stated up front that these classes would be required. His opinion was that if the ethics class taught by the City Attorney was supposed to be better than what was taught on line, it was an absolute fallacy.

Commissioner Deight clarified the reason on-line classes have questions to respond to is to ensure that the person participated.

Commissioner Gooch commented that on the information packet, item #35 appeared to have the second page missing. Commissioner Gooch also directed staff to provide clarification on the City's inactive duty procedure.

**INFORMATION ITEMS**

None

**ADJOURNMENT**

The meeting adjourned at 7:10 PM to the next regularly scheduled meeting of April 18, 2007.

**ITEM # 5**

# MURTAUGH MEYER NELSON & TREGLIA LLP

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April 12, 2007

Personnel Commission  
City of Huntington Beach  
2000 Main Street  
Huntington Beach, CA 92648

**Re: Legal Opinion on Application of Step 5(b) of  
Personnel Rule 19  
File No. 511-11538**

Dear Chairman Gooch and Commissioners:

The following is a letter brief analyzing a question propounded at the March 21, 2007 meeting of the Personnel Commission concerning Personnel Rule 19, dealing with non-disciplinary grievances. The Commission requested a further legal opinion on the following issue:

*Does the Personnel Commission have the authority not to hear a non-disciplinary grievance which has been submitted to it by the mutual consent of the parties, pursuant to Step 5(b) of Rule 19?*

*If so, what then is the status of the grievance upon denial of hearing?*

## **I. Background.**

Briefly, the City's Personnel Rules were adopted by the City Council in 1974, and Rule 19 provides a grievance procedure for resolving non-disciplinary issues.

A. Definition of Non-Disciplinary Grievance: Under Section 2 of Rule 19 a non-disciplinary grievance is a dispute concerning the interpretation or application of any provision of the City's Employer-Employee Relations Resolution, or any provision of this resolution, or any departmental rule governing personnel practices or working conditions, with the exception of disciplinary matters or collective bargaining matters which are at impasse.



B. Commission Involvement: The dispute resolution scheme set forth in Rule 19 is a five step progressive process beginning with an informal discussion between the grievant and his or her supervisor and concluding with Commission review. If unsatisfied with the informal discussion, the grievant may progress to a formal discussion with the supervisor, then to a review by the department head, and next to a review with the City Administrator (actually at the fourth step the Administrator designates the HR Manager/Officer to hold a *de novo* review, and to then submit a recommendation to the City Administrator).

The fifth and final step in the process was originally designed to involve the Personnel Commission only indirectly, as follows:

Step 5. Personnel Board. If the grievance is not settled under Step 4 above, it may be appealed to the Personnel Board for *de novo* hearing and final determination in accordance with the following procedure:

(a) Within five (5) days after the time decision is rendered under Step 4 above, a written statement of grievance shall be filed with the Personnel Director. Such statement of grievance shall set forth in detail the nature of the grievance, the facts surrounding the subject matter of the grievance, the contentions of the employee and the proposed solution or determination.

(b) Hearing. As soon as practicable thereafter, the Personnel Director shall set the matter for hearing before a hearing officer from the California State Office of Administrative Procedure. The hearing officer shall hear the case and shall make recommended findings, conclusions and decision in the form of a written report and recommendation to the Board.

(c) The Board shall consider the written report and recommendations of the hearing officer and after due deliberation in executive session, shall render a decision in the matter which shall be final and binding on all parties, and from which there shall be no further appeal.

## **II. Modification Authorizing Direct Hearing via Collective Bargaining.**

However, Step 5(b) has been modified via the collective bargaining process over the years, as is permitted pursuant to Personnel Rule 21-13, and now, in the main,<sup>1</sup> reads as follows:

Step 5(b) Personnel Board Hearing. As soon as practicable thereafter, the Human Resources Manager shall set the matter for hearing before a hearing officer either selected by mutual consent of the parties, or from a list provided by the Personnel

<sup>1</sup> The MOU's for MEA and POA are different. When collective bargaining modifies or conflicts with a Personnel Rule, the provision as stated in the MOU controls.

Commission. Ratification of the hearing officer selected by mutual consent of the parties, if from the list approved by the Personnel Commission, shall not require separate approval or ratification by the Personnel Commission. The hearing officer shall hear the case and shall make recommended findings, conclusions and decision in the form of a written report and recommendation to the Personnel Commission. *In lieu of the hearing officer process, the Personnel Commission may agree to hear a case directly upon submission of the case by mutual consent of the parties* (emphasis added).

It is the italicized portion of the modified Step 5(b) which is currently under scrutiny.

### III. Analysis.

#### A. Commission Retains Discretion.

As pointed out by Commissioner Deight, Step 5(b) states that the Commission “may agree to hear a case....” This language clearly creates discretion in the Commission to determine whether it will hear the case or not. If the language was “shall hear a case directly upon submission...” then it would establish a mandatory requirement to hear the case. However, use of the word “may” means that the Commission retains discretion to decide whether or not it wants to hear the matter.

#### B. Intent to Provide an Alternative Hearing Procedure.

However, Step 5(b) of Rule 19, as modified, is clearly an attempt to establish an alternative procedure by which the parties to a grievance could air their respective positions in a hearing other than before a hearing officer. Such an alternative procedure was not originally established in the Rules, and has been adopted by all but two of the City’s bargaining units. Thus, it should be given effect if possible, or there should be a procedure by which the Commission could invoke a reasonable preliminary review of the matter, and then determine if it wanted to grant the hearing.

#### C. Problem of Burden to the Commission.

One of the factors raised during the discussion of the direct hearing process at the March meeting was that the Commission did not have the time or wherewithal to sit as the adjudicatory body at a full evidentiary hearing. However, resolution of that issue requires examining the complexity of the hearing envisioned by the Step 5(b) procedure, or determining how much process is due in this context.

There are two references within Rule 19 itself which provide guidance to this inquiry. First, the initial language indicates that grievances appealed to Step 5 from Step 4 are to be accorded a *de novo* review. This means that neither the parties nor the fact-finder are bound by any position, evidence or witnesses that have gone before. The

parties are free to put on a case at Step 5 as if they were articulating their positions from the outset. This does not mean that all the evidence from Steps 1-4 evaporates. This prior evidence may be used by either side, including being used as a basis for cross-examination or impeachment. However, the provision of a *de novo* hearing means that the parties are each free to put on whatever evidence (testimonial, documentary or demonstrative) it believes is relevant to its position. The Commission, of course, retains the final word on what is actually relevant.

The second guidepost regarding the scope of the hearing to be provided at Step 5(b) comes from the dictates of what the hearing officer is to do when hearing a Rule-19 dispute at Step 5. The Rule states, "The hearing officer shall hear the case and make recommended findings, conclusions and decision..." This connotes an adjudicatory hearing. This is a hearing where disputed facts are presented via evidence to the hearing officer as fact-finder, who then makes a determination or finding based upon the weight of the evidence presented, the arguments of the parties and the relevant law, if applicable.

This adjudicatory process of hearing factual evidence and making a determination based upon the evidence presented means that the Step 5 hearing requires an evidentiary hearing which provides sufficient due process to constitute a fair hearing.

Because the direct hearing to the Personnel Commission conceived of under Step 5(b) is in lieu of a hearing before a hearing officer, it is reasonable to conclude that the direct hearing before the Commission must provide at least as much process to the parties as would be due had they presented their case to a hearing officer. Thus, in my opinion, they would be entitled to a full evidentiary hearing before the Commission.<sup>2</sup>

D. Revert to Hearing Officer Review.

If the Commission decided to reject the request for a direct hearing I also am of the opinion that the parties would still be entitled to a hearing before a hearing officer as set forth in Step 5.

This is because, whether heard by a hearing officer or the Commission, this is the final adjudicatory step in the non-disciplinary grievance process, and as discussed above, is accorded a full *de novo* evidentiary review on the merits.

So if the Commission elects not to provide the adjudicatory forum for the Step 5 hearing, due process would require that the hearing officer option remain open to the parties.

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<sup>2</sup> This was the assumption that was made last year when the Commission developed procedures for holding a full evidentiary hearing to resolve Rule 19 requests at a direct hearing.

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**IV. Possible Intermediary Step.**

As a possible ameliorative alternative to rejection by fiat, it is recommended that the Commission consider establishing a procedure whereby grievants electing to submit to a direct hearing by the Commission at Step 5(b) submit a copy of the written statement of the grievance as required under Step 5(a) to the Commission for preliminary review. This statement is supposed to contain a statement of the grievance, detail the facts of the subject matter, set forth the contentions of the parties and articulate the proposed solution or determination established in Step 4.

Thus, if, after the parties decided to submit their dispute to the Commission for direct hearing, the Commission could first review the Step 5(a) statement of the grievance as a means of determining whether the dispute was appropriate for direct review or not. If done, it is believed that the Commission would then have enough information to make a reasoned decision as to whether or not it wanted to exercise its discretion to accept the non-disciplinary grievance for a direct evidentiary hearing, or to reject the request and allow the parties to seek review from a hearing officer.

Very truly yours,

MURTAUGH MEYER NELSON & TREGLIA LLP

James A. Murphy

JAM/jam

**ITEM # 7**

### Goals for the Personnel Commission & Staff

- Continue to recruit qualified applicants and provide timely eligibility lists to the hiring authority.
- Conduct job description reviews on a three year cycle to ensure meeting changing needs of the City.
- Develop new classes to meet changing needs of the City.
- Review and update the Personnel Rules to improve, clarify and keep current with changes in the State and Federal Laws as well as the needs of the City.
- Design and conduct a Personnel Commission Orientation during the calendar year of 2007.